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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARYBEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In re Applications of) MM DOCKET NO. 92-6
)
 NORMANDY BROADCASTING CORP.) File No. BRH-910129UR
)
 For Renewal of License of)
 Station WYLR(FM) (95.9 MHz))
 Glens Falls, New York)
)
 and)
)
 LAWRENCE N. BRANDT) File No. BPH-910430MB
)
 For a Construction Permit for)
 a New FM Station on 95.9 MHz)
 at Glens Falls, New York)

To: The Commission

REPLY

By an Order released July 24, 1997 (FCC97I-22) the Commission directed Normandy Broadcasting Corporation ("Normandy") to submit a response to the Motion to Reopen the Record and Enlarge Issues ("Motion") that Lawrence N. Brandt ("Brandt") filed in this proceeding on April 16, 1997. On August 12, 1997, Brandt's undersigned counsel received in the mail from Normandy an undated copy document titled "Response to Order Released July 24, 1997 and Motion to Reopen Record and Establish Disqualifying Issue Against Lawrence N. Brandt" ("Response"). This is Brandt's Reply to the Response.

In his Motion, Brandt made out a *prima facie* case that Normandy had abdicated control over Stations WYLR and WWSC to a time broker, Calvin H. Carr ("Carr") and that Normandy was in violation of the staffing and management presence requirements of

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the "main studio rule," 47 C.F.R. §73.1125. Specifically, Brandt showed by submitting a copy of the Time Brokerage Agreement ("TBA") between Normandy and Carr and through evidence gathered by a private investigator that:

- ▶ Normandy had turned over 100% of the air time on WYLR and WWSC to Carr as a time broker without any reservation of time for Normandy, as the licensee of the stations, to present public service programming to serve the needs of the stations' community of license.
- ▶ Although the TBA provides for Normandy to maintain control over the stations through the employment of a Station General Manager and a Chief Engineer, Normandy's sole principal, Christopher Lynch ("Lynch") who fills both of these positions is rarely if ever present at the stations and does not maintain an office at the stations.
- ▶ The issues lists obtained from the WYLR/WWSC public file (i) do not list a single program responsive to issues as having been aired in any quarter since the first quarter of 1991 and (ii) were obviously fabricated.

Although the Mass Media Bureau opposed Brandt's Motion on the novel theory that even if Normandy had abdicated control over WYLR and WWSC to Carr such conduct would not normally be disqualifying, the Bureau recognized that "Brandt's allegations and supporting evidence, unless adequately rebutted by Normandy, appear sufficient to warrant an investigation by the Bureau to determine whether rule violations have occurred.

The Order directed Normandy to respond "specifically" to Brandt's allegations. The Response does not comply with this directive. The Response consists of nothing more than general denials and unsubstantiated assertions that it has maintained control over the operations and programming of WYLR and WWSC,

that it has presented public service programming, and that it has maintained the requisite staff and management presence at the stations' main studio. Moreover, not only are Normandy's general denials unsubstantiated, but, when viewed against the specific allegations contained in Brandt's Motion, and the documentation submitted to substantiate the allegations, Normandy's denials create a *prima facie* case that the Response contains intentional and material misrepresentations of fact.

Brandt submitted a copy of the TBA between Normandy and Carr which not only turned over 100% of the air time on WYLR and WWSC to Carr, but it reflected that a provision which would have reserved some time for Normandy to air public service programming of its choosing had been stricken from the Agreement. Brandt also submitted copies of the issues/programs lists for WYLR and WWSC for every calendar quarter since 1991 which did not reflect a single issue oriented programming having been aired by either station. Despite this evidence that Normandy presents no public service programming over WYLR and WWSC and that it has contractually relinquished any right to do so, Normandy represents in its Response that it has "designed" and "instituted" public service programming for both stations and that the stations' public file "is voluminous and reflects Normandy's [public service programming] efforts." For Normandy to make these representations in the face of substantial evidence that they are not true without submitting any documentation to establish that there is any truth to these representations cries

out for specification of issues to determine whether Normandy is fulfilling its obligations to operate the stations in the public interest and whether Normandy has lied to the Commission about its public service programming.¹

In response to the evidence submitted by Brandt that Normandy does not maintain the requisite staff and management presence at the WYLR/WWSC main studio, Normandy simply asserts that "Lynch . . . spends whatever time is necessary to ensure both FCC compliance and a high level of public service" and that "[a]ll station employees are directly responsible to Lynch." Significantly, Normandy provides no information as to how much time Lynch spends at the stations on a daily, weekly or monthly basis. Moreover, Normandy's claim that all station employees are directly responsible to Lynch is misleading, if not an outright misrepresentation, since by Normandy's own admission, it has no employees other than Lynch and it is clear under the TBA that the employees of the broker, Carr, are accountable to Carr.

The Commission's July 24, 1997 Order reflects that the Commission regards the allegations contained in Brandt's Motion as raising issues which are potentially disqualifying. Normandy's Response not only has done nothing to dispel the *prima*

¹In *Barry Skidelsky*, 6 FCC Rcd. 2221 (ALJ 1991), the ALJ found that representations that Normandy had made concerning its public service programming and the content of its public file "cannot be relied upon and [are] in material respects untruthful." If, as appears to be the case, Normandy has again made unreliable and untruthful statements to the Commission about its public service programming, this would indeed be matter or disqualifying significance.

facie showing of disqualifying conduct made by Brandt, but it actually contains further evidence that Normandy has learned nothing from the problems that it got itself into as a consequence of past misrepresentations to the Commission and that it cannot be relied upon to be truthful in its dealings with the Commission. Accordingly, the Brandt's Motion to Re-open the Record and Enlarge Issues should be granted with the following issue added to the list of issues originally proposed:

To determine whether the pleading title "Response to Order Released July 24, 1997 and Motion to Reopen Record and Establish Disqualifying Issues Against Lawrence N. Brandt" that Normandy filed in this proceeding contained material false statements and, if so, the impact of those false statements on Normandy's qualifications to continue as a Commission licensee.

Respectfully submitted,
David Tillotson
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Tel: 202/625-6241
Attorney for Lawrence Brandt

Dated: August 18, 1997

CERTIFICATE OF SERVICE

I, DAVID TILLOTSON hereby certify that a copy of the foregoing **REPLY TO RESPONSE TO ORDER RELEASED JULY 24, 1997 AND MOTION TO REOPEN RECORD AND ESTABLISH DISQUALIFYING ISSUE AGAINST LAWRENCE N. BRANDT** has this 18th day of August, 1997, been and has been sent by first class United States mail, postage prepaid, to:

Christopher P. Lynch, President
Normandy Broadcasting Corp.
217 Dix Avenue
Glens Falls, NY 12801

James W. Shook, Esq.
Federal Communications Commission
Hearing Branch, Enforcement Division
2025 M Street, N.W., Room 7212
Washington, D.C. 20554



David Tillotson